



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/635,871

08/05/2003

Dan Pharo

9752

7590

04/19/2006

Robert J. Schaap
Ste. 188
21241 Ventura Blvd.
Woodland Hills, CA 91364

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/635,871

Applicant(s)

PHARO ET AL.

Examiner

R. Alexander Smith

Art Unit

2859

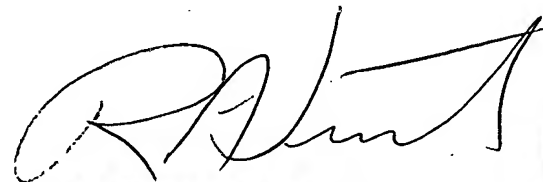
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 01 February 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See continuation sheet.



R. Alexander Smith
Primary Examiner

Continuation Sheet (PTOL-462)

For Item 5 on form 462:

The MPEP requires a concise statement of each ground of rejection presented for review.

On page 8 under section VII, issue 2), the applicant is arguing claims 1-5 and 29-34 over Hensler et al. in view of Castle et al., Gehweiler et al. and Sanders et al.; however, the listing of claims should be 1-3, 5, 13-16, 18 and 20-22.

On page 8 under section VII, issue 3):

(a) The applicant is arguing claims 1-5 and 29-34 over Hensler et al. in view of Chien, Gehweiler et al. and Sanders et al.; however, the listing of claims should be 1-3, 5, 13, 14, 16-18, 20-23 and 27-34.

(b) "Chen" should be --Chien--.

(c) Philips was applied in combination for claim 4 only. Therefore, it appears that this should be listed as a separate combination under the grounds for rejection for review on appeal if the applicant chooses to argue claim 4 separately. The supporting argument would also need to be added under a separate heading as addressed by 37 CFR 41.37(c)(1)(viii).

On page 8 under section VII, issue 4): Claims 6-12 and 13-23 are not argued separately from issues 1), 2), and 3) and therefore it is unclear as to if these can be argued separately. However, if they can be argued separately then it would appear that each claim would need to be addressed separately based on the rejection applied for the particular claim, i.e., claims 6-8, 10, 12 in view of Castle, and then claim 9 further in view Chein, and likewise for the claims 13-23. Applicant should note that claim 19 has been cancelled.

Continuation Sheet (PTOL-462)

On page 9 under section VII, issue 5): Claims 24-28 are not argued separately from issues 1), 2), and 3) and therefore it is unclear as to if these can be argued separately. However, if they can be argued separately then it would appear that each claim would need to be addressed separately based on the rejection applied for the particular claim, similar to issue 4 above. Applicant should note that claim 24 does not address movement indicators but addresses at least one elongate element which appears to be related to the limitations of claim 6 b); however, the antecedent relationship is not disclosed.

For Item 6 on form 462:

The MPEP states that any claim argued separately should be placed under a subheading identifying the claim by number. None of the issues addressed in Item 5 appear to be argued separately under a subheading identifying the claim by number.

Issues 1), 2) 4) and 5) have not been separately argued.

Issue 3) from Item 5 appears to be argued. Applicant should note that Phillips from Issue 3) of Item 5 has not been addressed in the argument, therefore, Phillips should be addressed or removed from Issue 3).

For Item 7 on form 462:

For Appendix A, the claims are not a correct copy. The errors are minor and involve correction of grammatical mistakes in the claims that were finally rejected; however, these errors were part of a correct copy of the finally rejected claims and should remain in the claims. The errors are:

Claim 1, paragraph f) line 2: --securing-- should be reinserted before "locating".

Claim 6, paragraph d) last line: "-" should be removed.

Claim 13, paragraph e) line 1: --a-- should be reinserted before "an".

Continuation Sheet (PTOL-462)

For Item 10 on form 462:

On March 29, 2006, the Applicant and the Examiner had a telephonic conversation on modifying the claims as noted in the Interview Summary. The Applicant is working on proposed modifications to the claims based on the Examiner's suggested proposed base claim as a rough starting point for claim construction. Should this reworking of claims fail to produce allowable claims then it appears to the examiner that the finality of the Office action mailed on November 19, 2004 will need to be withdrawn and a new non-final Office action will be needed.

The main problem being the applied rejection fails to address the method steps of claims 13-18 and 29-34.

Other problems noted with respect to the claims that need to be addressed are:

Claim 13 addresses a method; however, the dependent claims 14-18 are drawn to a system and not a method.

There are antecedent errors between the end of line element in claim 24 and the limitations of claim 6 b).

There appears to be a relationship problem between the informational message's placement and usage in claim 18 relative to the limitations disclosed in claim 13.